IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case
Date of decision: 27th March, 2006

S.T.R. No. 118 of 2003
(Old No. 119/93)

M/s Parvatiya Sahkari Bhesaj
Vikas Evan Kraya Vikraya Samiti Sangh Ltd.
Pithoragarh. .....Applicant/Revisionist

Vs.

The Commissioner of Sales Tax
U.P. Lucknow .....Opposite Party

Shri S.K. Posti, learned counsel for the revisionist.
Shri Pitamber Maulekhi, learned Additional Advocate General for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Date: 27.03.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

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Shri S.K. Posti, learned counsel for the revisionist.
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Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2. This revision, filed under Section 11 of U.P. Sales Tax Act, 1948, is directed against the order dated 29.09.1992, passed on application, moved under Section 22 of the said Act, before the Sales Tax Tribunal, Bench Haldwani, whereby the application was rejected.

3. Brief facts of the case are that revisionist is an agency, which was collecting herbs from the region under the Forex Department. The matter pertains to the assessment year 1986-87. The question of law involved in this revision is an under:-

1 Whether the sales Tax Tribunal erred in law in dismissing the application the application of the assessee under

Section 22 of the Act, ignoring the fact that the case of the revisionist was similar to that of Kumaun Mandal Vikas Nigam- another assessee and further ignoring the fact that the tax in respect of the collected herbs had already been realized from Divisional Forest Officer, Pithoragarh?

4. The impugned order shows that the application was rejected on the ground that the mistake alleged in the application is beyond the scope of Section 22 of the U.P. Sales Tax Act, 1948. Section 22 of U.P. Sales Tax Act, 1948, reads as under:-

***"22. Rectification of mistake** – (1) Any officer or authority or the Tribunal or the High Court may on its own motion or on the application of the dealer or any other interested person rectify any mistake in any order passed by him or it under this Act apparent on the record within three years from the date of the order sought to be rectified:*

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period:

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

(2). Where such rectification has the effect of enhancing the assessment, the assessing authority

concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the Rules framed thereunder shall apply as if such notice had been served in the first instance."

5. Aforesaid provision only permits to rectify the mistake if it is apparent on the record. However, it does not say that which mistake are under the ambit of the said Section and which are beyond it. In view of the principle of law laid down in ***Daulat Ram Vs. Commissioner of Sales Tax 1981 U.P.T.C. 1013, Commissioner Sales Tax Vs. S/S Jain Sons Rubber 1989 U.P.T.C. 377, M/s Capor Sons Vs. Commissioner Sales Tax 1991 U.P.T.C. 1038 and Subhas Chandra Paul Vs. State of Tripura 1991 Sales Tax Cases Vol. 82 Pg. 13,*** *it is clear that there is no bar to entertain application to correct clerical omissions or to rectify errror of law. Even error of fact, if it is apparent on the face of the record and material to the case, in the opinion of the concerned authority, can be rectified under Section 22 of U.P. Sales Tax Act, 1948.*

6. In para-4 and para-5 of the revision, the revisionist has alleged that Divisional Forest Officer, Pithoragarh, was assessed to tax on the herbs by the Assessing Authority for the same assessment year 1986-87 and not tax can be imposed on the applicant in respect of the same again. He has also alleged that on the similar circumstances, Kumaun Mandal Vikas

Nigam was exonerated from the liability to pay tax. The impugned order shows that the said mistake was brought to the notice of the tribunal for being rectified. But tribunal has rejected it only on the ground that it is beyond the scope of Section 22 of U.P. Sales Tax Act, 1948. As discussed above, the view taken by the tribunal cannot be sustained in the eyes of law and if the ground as to the double taxation, raised by the assessee was ignored by the tribunal and not answered after it is brought to the notice by filing application under Section 22, the same can be rectified if the tribunal comes to the conclusion that due to the mistake that ground of the dealer was not considered while disposing of the second appeal.

7. In the above circumstances and for the reasons as discussed above, the revision is allowed and the impugned order dated 29.09.1992, passed in Misc. Case No. 13 of 1992 is set aside. The tribunal is directed to pass the order afresh on the application moved under Section 22 by the assessee regarding rectification of mistake if any (in the order dated 24.12.1991 passed in Second Appeal No. 104 of 1991 Assessment year 1986-87).

(Prafulla C. Pant, J.)

Dt: 27th March, 2006
Sweta